

# EXHIBIT M

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2 COURT OF COMMON PLEAS  
3 HAMILTON COUNTY, OHIO  
4  
5 - - -  
6 JANET NOLTE, et al.,  
7 Plaintiff,  
8 VS. CASE NO. A-9907039  
9 OHSL FINANCIAL CORP., VOLUME IV  
10 et al.,  
11 Defendants.  
12  
13 Continuation of the deposition of  
14 KENNETH HANAUER, a witness herein, called by  
15 the plaintiff for cross-examination, pursuant  
16 to the Ohio Rules of Civil Procedure, taken  
17 before me, Lee Ann Williams, a Registered  
18 Professional Reporter and Notary Public in and  
19 for the State of Ohio, at the offices of Gene  
20 Mesh & Associates, 2605 Burnet Avenue,  
21 Cincinnati, Ohio 45219, on Tuesday, August 8,  
22 2000, at 1:00 p.m.  
23  
24  
25

1 APPEARANCES:  
2 On behalf of the Plaintiff:  
3 Michael G. Brautigam, Esq.  
4 Gene Mesh & Associates  
5 2605 Burnet Avenue  
6 Cincinnati, Ohio 45219  
7  
8 On behalf of the Defendant:  
9 Jamie M. Ramsey, Esq.  
10 Keating, Muething & Klekamp  
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STIPULATIONS

11 It is stipulated by and between counsel for  
12 the respective parties that the deposition of  
13 KENNETH HANAUER, a witness herein, called by  
14 the plaintiff for cross-examination pursuant to  
15 the Ohio Rules of Civil Procedure, may be taken  
16 at this time by the notary; that said  
17 deposition may be reduced to writing in  
18 stenotypy by the notary, whose notes may then  
19 be transcribed out of the presence of the  
20 witness; and that proof of the official  
21 character and qualifications of the notary are  
22 expressly waived.  
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1 I N D E X  
2 Examination of KENNETH HANAUER Page  
3 By Mr. Brautigam: 743, 799  
4 By Mr. Ramsey: 788  
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1 KENNETH HANAUER  
2 having been previously duly sworn, further  
3 testified as follows:  
4 CONTINUED CROSS-EXAMINATION  
5 BY MR. BRAUTIGAM:  
13:05:50 6 Q. Good afternoon, Mr. Hanauer.  
13:05:51 7 A. Good afternoon, sir.  
13:05:52 8 Q. I remind you that you're still  
13:05:54 9 under oath.  
13:05:55 10 A. Okay.  
13:05:56 11 Q. Mr. Hanauer, we talked at length  
13:05:58 12 last time about the proxy materials and the  
13:06:00 13 prospectus. Do you remember generally that  
13:06:02 14 testimony?  
13:06:02 15 A. Yes, sir.  
13:06:03 16 Q. And we talked about the vote of  
13:06:05 17 the Board of Directors of OHSL unanimously  
13:06:10 18 approving the transaction. Do you remember  
13:06:12 19 that testimony?  
13:06:13 20 A. Yes, sir.  
13:06:13 21 Q. And you testified over the course  
13:06:14 22 of three days that the Board, in fact, did  
13:06:18 23 approve the transaction unanimously. Do you  
13:06:20 24 remember that testimony?  
13:06:21 25 A. That's correct.

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13:06:22 1 Q. Okay. And that is reflected here  
 13:06:24 2 on the first page of the proxy materials, where  
 13:06:26 3 it says, your Board of Directors has -- excuse  
 13:06:30 4 me, your Board of Directors unanimously  
 13:06:32 5 approved the acquisition and believes that it  
 13:06:35 6 is in the best interest of OHSL stockholders.  
 13:06:38 7 Do you see that?  
 13:06:40 8 A. Yes, sir, I do.  
 13:06:40 9 Q. And that sentence refers to the  
 13:06:42 10 8/2/99 vote, correct?  
 13:06:45 11 A. Yes, sir.  
 13:06:47 12 Q. Okay. You're familiar with the  
 13:06:49 13 word unanimously as it's used in that sentence,  
 13:06:51 14 correct?  
 13:06:52 15 A. Yes, sir.  
 13:06:53 16 Q. What do you understand that word  
 13:06:54 17 to mean as it's used in that sentence?  
 13:06:57 18 A. That everyone that participated in  
 13:07:00 19 the vote, voted in favor of the transaction.  
 13:07:04 20 Q. Okay. It doesn't say that in the  
 13:07:05 21 document, does it?  
 13:07:09 22 A. It's inferred with the term  
 13:07:11 23 unanimously. I don't believe it does, no, sir.  
 13:07:14 24 Q. Okay. It says, your Board of  
 13:07:16 25 Directors unanimously approved the

13:07:18 1 acquisition --  
 13:07:19 2 A. Yes.  
 13:07:20 3 Q. -- stop. Correct?  
 13:07:20 4 A. Correct.  
 13:07:21 5 Q. Now, as of 8/2/99, who were the  
 13:07:24 6 directors?  
 13:07:26 7 A. Norb Brinker, Bill Hillebrand, Al  
 13:07:30 8 Hucke, myself, Joe Tenoever, Tom McKiernan, and  
 13:07:40 9 Howard Zoellner, seven of us.  
 13:07:43 10 Q. Okay. And do you think it's a  
 13:07:45 11 reasonable reading of the first part of that  
 13:07:47 12 sentence, your Board of Directors unanimously  
 13:07:51 13 approved the acquisition, stop, that all seven  
 13:07:54 14 of the directors you just named voted in favor  
 13:07:56 15 of the transaction?  
 13:07:59 16 A. That is correct.  
 13:07:59 17 Q. Okay. Let's --  
 13:08:01 18 A. There was no opposition to the  
 13:08:02 19 vote, okay? At the time that we voted, there  
 13:08:06 20 was no opposition to the transaction.  
 13:08:07 21 Q. Okay. Let me ask the question  
 13:08:08 22 again.  
 13:08:09 23 A. Okay.  
 13:08:10 24 Q. With respect to that first part of  
 13:08:13 25 the sentence, your Board of Directors

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13:08:14 1 unanimously approved the acquisition, stop.  
 13:08:19 2 A. Um-hmm.  
 13:08:19 3 Q. Do you believe as you sit here  
 13:08:20 4 today that it's a fair reading of that part of  
 13:08:24 5 the sentence that those seven directors you  
 13:08:26 6 named, unanimously voted to approve the  
 13:08:30 7 transaction?  
 13:08:31 8 A. They voted individually for the  
 13:08:35 9 transaction, yes, sir.  
 13:08:36 10 Q. All seven directors?  
 13:08:38 11 A. Yes, sir.  
 13:08:39 12 Q. Okay. Let's take a look at what  
 13:08:40 13 has been previously marked as McKiernan Exhibit  
 13:08:45 14 2, and I'm handing it to you. Have you seen  
 13:08:49 15 McKiernan Deposition Exhibit Number 2 before?  
 13:08:53 16 A. Yes, sir.  
 13:08:54 17 Q. Are you familiar with it?  
 13:08:55 18 A. Yes, sir.  
 13:08:56 19 Q. Do you recognize it?  
 13:08:57 20 A. Yes.  
 13:08:58 21 Q. What is McKiernan Deposition  
 13:09:00 22 Exhibit Number 2?  
 13:09:01 23 A. It's a copy of the minutes of a  
 13:09:05 24 meeting held on August 2nd, 1999 of the Board  
 13:09:10 25 of Directors, a special meeting of the Board of

13:09:12 1 Directors of OHSL Financial.  
 13:09:14 2 Q. And this was the special meeting  
 13:09:15 3 that approved the transaction that we're  
 13:09:17 4 talking about, correct?  
 13:09:18 5 A. That's correct.  
 13:09:20 6 Q. Okay. Would you please read into  
 13:09:21 7 the record the directors who were present?  
 13:09:24 8 A. Brinker, Hanauer, Hillebrand,  
 13:09:27 9 Hucke, Tenoever, and Zoellner.  
 13:09:30 10 Q. Those are six directors, correct?  
 13:09:31 11 A. Absolutely.  
 13:09:32 12 Q. Mr. McKiernan was not present,  
 13:09:34 13 correct?  
 13:09:34 14 A. According to these minutes, he was  
 13:09:35 15 not, yes, sir.  
 13:09:36 16 Q. In fact, he was in Europe on a  
 13:09:38 17 cruise, correct?  
 13:09:39 18 A. I believe you're correct. He was  
 13:09:41 19 in the Mediterranean, I think, yes.  
 13:09:44 20 Q. Okay.  
 13:09:45 21 A. If memory serves me, yes.  
 13:09:47 22 Q. Would it be fair to say that Mr.  
 13:09:49 23 McKiernan, because he was not present, was not  
 13:09:51 24 one of the directors who unanimously voted to  
 13:09:54 25 approve the transaction?

13:09:55 1 A. Yes, sir, you can -- you could say  
13:09:58 2 that.

13:09:59 3 Q. Is there any other reasonable  
13:10:00 4 reading of McKiernan Exhibit 2 and the first  
13:10:06 5 page of the proxy materials?

13:10:09 6 A. No, sir. Again, the proxy  
13:10:14 7 materials state that the Board of Directors,  
13:10:18 8 which would infer the whole Board of Directors,  
13:10:21 9 unanimously approved. And in fact, in looking  
13:10:24 10 at the minutes dated August 2, it was only the  
13:10:27 11 directors at the meeting that unanimously  
13:10:30 12 approved the transaction.

13:10:32 13 Q. Okay. Do you believe that Mr.  
13:10:33 14 McKiernan's lack of a vote on this issue at  
13:10:36 15 this meeting is material information?

13:10:39 16 A. Absolutely not, because he was  
13:10:40 17 very pro the transaction. He was the one  
13:10:42 18 that -- he was one of them that spurred the  
13:10:45 19 transaction, so I -- in my opinion, it is  
13:10:47 20 totally irrelevant that he was not at that  
13:10:50 21 meeting.

13:10:51 22 Q. Okay. Well, why didn't you tell  
13:10:53 23 the shareholders that?

13:10:54 24 A. Why didn't I tell the shareholders  
13:10:56 25 what?

13:12:35 1 another -- restate the first part of your  
13:12:37 2 question again.

13:12:38 3 Q. Okay. You testified a moment ago  
13:12:39 4 that you forgot that Mr. McKiernan was in  
13:12:41 5 Europe.

13:12:42 6 A. Okay.

13:12:42 7 Q. And that to that extent this was  
13:12:44 8 wrong, although you did not believe it's  
13:12:46 9 material, correct?

13:12:47 10 A. Yes, sir, that's a good summation.

13:12:51 11 Q. Okay. Now, what I'm asking you  
13:12:52 12 now is, is it a fair reading that the first  
13:12:57 13 part of the sentence, your Board of Directors  
13:13:00 14 unanimously approved the acquisition, stop,  
13:13:03 15 means to convey that the six remaining  
13:13:06 16 directors did, in fact, unanimously vote to  
13:13:10 17 approve the transaction?

13:13:11 18 A. Yes.

13:13:15 19 Q. Okay. Mr. Brinker testified under  
13:13:16 20 oath that he did not vote at the August 2nd,  
13:13:21 21 1999 meeting. So, in fact, he never voted to  
13:13:24 22 approve the transaction. Is that consistent  
13:13:27 23 with your recollection?

13:13:33 24 A. Mr. Brinker, in any controversial  
13:13:45 25 discussions that we ever got into, would always

13:10:56 1 Q. That he was not a director who had  
13:10:58 2 voted to approve the transaction, and therefore  
13:11:00 3 the transaction -- the vote on the transaction  
13:11:06 4 was not unanimous.

13:11:07 5 A. I cannot answer that, because it  
13:11:11 6 did not -- that did not cross my mind. And it  
13:11:14 7 was not pointed out to me in the drafting of  
13:11:24 8 all the documents that, in fact, and in my  
13:11:27 9 memory, in fact, that Mr. McKiernan was not at  
13:11:31 10 the meeting of August the 2nd. He had been at  
13:11:34 11 the majority of the other meetings and was very  
13:11:36 12 proactive, so that, that is an error in the  
13:11:44 13 document which to date I had not even been  
13:11:49 14 aware of consciously.

13:11:53 15 Q. Okay. Do you believe that the  
13:11:54 16 first part of the sentence that we're focused  
13:11:56 17 on now, your Board of Directors unanimously  
13:11:58 18 approved the acquisition, stop, states that  
13:12:10 19 aside from Mr. McKiernan who was in Europe, and  
13:12:13 20 aside from Mr. Herron who had resigned and was  
13:12:17 21 no longer a member of the Board, the remaining  
13:12:20 22 six directors all voted unanimously in favor of  
13:12:23 23 the transaction?

13:12:30 24 A. The -- I'm sorry, when you  
13:12:31 25 mentioned Mr. Herron, I -- my mind went off in

13:13:49 1 use his position as Chair not to vote. And I  
13:13:54 2 don't recall -- I don't believe there was any  
13:13:55 3 discussion in this proceeding, but in other  
13:13:58 4 proceedings that he would not -- it was not a  
13:14:03 5 requirement for him to vote and would not do so  
13:14:06 6 unless there was a tie. So I do not know what  
13:14:14 7 was in his heart at the time.

13:14:17 8 Certainly this document went out  
13:14:19 9 over his signature. He knew of the contents of  
13:14:25 10 the document. And if at this juncture it's his  
13:14:30 11 testimony that he didn't vote for the  
13:14:32 12 transaction, that's something that's got to be  
13:14:36 13 on his conscience, not mine.

13:14:39 14 Q. Okay. Let's see if we can put  
13:14:41 15 aside what's in Mr. Brinker's heart and on Mr.  
13:14:46 16 Brinker's conscious. At the August 2nd --

13:14:48 17 A. I can't address whether he said  
13:14:50 18 aye or nay. There were no nays when he asked  
13:14:54 19 for the vote. That's all I can -- that's all I  
13:14:56 20 can tell you. There were -- there was nobody  
13:14:59 21 sitting around that table of the six directors  
13:15:02 22 present that said they were not in favor of  
13:15:05 23 this transaction.

13:15:07 24 Q. Okay. My question is a little  
13:15:08 25 different. You were at the meeting on August

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13:15:10 1 2nd, 1999, correct?  
 13:15:12 2 A. Yes.  
 13:15:14 3 Q. Okay. Did Mr. Brinker vote?  
 13:15:17 4 A. I told you I -- whether he said  
 13:15:19 5 aye or nay, whether he said aye -- he called  
 13:15:23 6 for the vote. Should he have said aye? I  
 13:15:26 7 cannot address that. I do not know whether he  
 13:15:29 8 uttered anything or not. I, I can't tell  
 13:15:31 9 you --  
 13:15:32 10 Q. Okay.  
 13:15:32 11 A. -- because I don't know.  
 13:15:33 12 Q. Okay. Why don't you know?  
 13:15:34 13 A. What do you mean, why don't I  
 13:15:35 14 know? We didn't sit there and go around the  
 13:15:38 15 room, all in favor, aye, and there was some  
 13:15:41 16 grumbings and that was it. There was no aye,  
 13:15:44 17 aye, aye. There was not a call for a vote of  
 13:15:47 18 each individual person as to what their  
 13:15:51 19 position was. It just didn't happen that way.  
 13:15:54 20 Now, that would be a question why  
 13:15:56 21 he -- to him, as to why he didn't call for a  
 13:15:59 22 specific utterance from each individual so you  
 13:16:03 23 would know whether the relevance of that  
 13:16:07 24 paragraph -- you know, whether that paragraph  
 13:16:09 25 is correct or not. I can't address that, I

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13:17:35 1 strike everything after "not correct."  
 13:17:38 2 Q. I thought we had covered that a  
 13:17:44 3 moment ago. When it says here, your Board of  
 13:17:47 4 Directors unanimously approved the acquisition,  
 13:17:49 5 stop. We are talking about that special  
 13:17:51 6 meeting on August 2nd, 1999, are we not?  
 13:17:56 7 A. How would we, the reader of that  
 13:17:58 8 document, know that, if you want to be that  
 13:18:00 9 specific?  
 13:18:01 10 Q. Well, can you answer that question  
 13:18:04 11 yes or no?  
 13:18:06 12 A. Are we talking about that meeting?  
 13:18:08 13 I believe the document is talking about that  
 13:18:09 14 meeting, yes.  
 13:18:11 15 Q. Okay. Is there any other possible  
 13:18:12 16 meeting that you're referring to?  
 13:18:14 17 A. There were, there were many  
 13:18:17 18 meetings in which all of the directors voiced  
 13:18:20 19 opinions as to whether they would and had  
 13:18:25 20 intention of approving the transaction.  
 13:18:29 21 Q. Was there any meeting, other than  
 13:18:32 22 the 8/2/1999 meeting, that you could think of  
 13:18:40 23 that would be referring to the first part of  
 13:18:43 24 that sentence, your Board of Directors  
 13:18:44 25 unanimously approved the acquisition, stop?

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13:16:12 1 didn't run the meeting.  
 13:16:13 2 Q. Okay. Let me ask you to assume  
 13:16:15 3 for the sake of this question that Mr. Brinker  
 13:16:17 4 testified that he did not vote in favor of the  
 13:16:20 5 transaction or against the transaction. He  
 13:16:22 6 just didn't vote. If you assume for the  
 13:16:26 7 purposes of this question that that is a fact,  
 13:16:28 8 do you believe that the first part of that  
 13:16:31 9 sentence --  
 13:16:32 10 A. Then his document is wrong, okay?  
 13:16:34 11 Q. Okay. Let me finish the question.  
 13:16:35 12 Do you believe the first part of that sentence,  
 13:16:37 13 your Board of Directors unanimously approved  
 13:16:39 14 the acquisition, is correct?  
 13:16:52 15 A. I guess you could stretch that  
 13:16:54 16 into being it is not correct if he didn't vote  
 13:16:59 17 either way. I, I can only assume at this point  
 13:17:03 18 that if we sat around the table and nobody  
 13:17:06 19 uttered anything, we would still be sitting  
 13:17:08 20 there a year later. You know, it was the --  
 13:17:16 21 again, in prior meetings and, in fact, when you  
 13:17:18 22 look at this paragraph, it does not state that  
 13:17:29 23 it is the meeting of August the 2nd that it is  
 13:17:32 24 referencing.  
 13:17:35 25 MR. BRAUTIGAM: Okay. Move to

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13:18:48 1 A. No. I believe it was the intent  
 13:18:50 2 of this paragraph to refer to the 8/2 meeting.  
 13:18:54 3 Q. Do you believe that the vote or  
 13:18:58 4 nonvote of the Chairman of the Board of  
 13:18:59 5 Directors on this transaction is material  
 13:19:01 6 information?  
 13:19:03 7 A. Whether he voted or not?  
 13:19:07 8 Q. Yes.  
 13:19:07 9 A. I believe that -- yeah, I believe  
 13:19:13 10 that could be material information.  
 13:19:15 11 Q. Okay. Do you believe that it's  
 13:19:16 12 properly disclosed in this document, based on  
 13:19:18 13 our conversation today?  
 13:19:19 14 MR. RAMSEY: Objection.  
 13:19:21 15 A. It is not in the document that he  
 13:19:22 16 did not vote, if that is his testimony that he  
 13:19:26 17 did not.  
 13:19:27 18 Q. Okay. Actually it was also the  
 13:19:28 19 testimony of Mr. McKiernan. Mr. McKiernan --  
 13:19:31 20 A. Mr. McKiernan wasn't even there,  
 13:19:33 21 how would he know what Norb did?  
 13:19:37 22 Q. Actually, from the Board --  
 13:19:39 23 A. Mr. McKiernan cannot testify to  
 13:19:40 24 what Norb did on 8/2, he was thousands of miles  
 13:19:43 25 away.



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13:19:44 1 Q. Actually I take that back. What  
13:19:45 2 Mr. McKiernan said, and what I meant to convey,  
13:19:49 3 was that Mr. McKiernan testified that it was  
13:19:52 4 plain that the phrase, your Board of Directors  
13:19:57 5 unanimously approved the acquisition, stop,  
13:20:00 6 meant that of those directors who were there  
13:20:03 7 and who were eligible to vote, that they had  
13:20:05 8 unanimously approved the transaction. And I  
13:20:08 9 pointed out that, well, that's not true and  
13:20:10 10 correct, either.

13:20:11 11 A. Okay.

13:20:12 12 Q. But anyway, that's between --

13:20:13 13 A. Okay.

13:20:14 14 Q. -- Mr. McKiernan and myself.

13:20:16 15 A. Okay.

13:20:16 16 Q. I did not mean to misspeak  
13:20:18 17 earlier.

13:20:20 18 A. Sure.

13:20:32 19 Q. Do you believe that whatever Mr.  
13:20:34 20 Brinker did as Chairman of the Board should  
13:20:36 21 have been disclosed to the shareholders? In  
13:20:36 22 other words, if he didn't vote to approve the  
13:20:40 23 transaction, fine, he could have said the  
13:20:42 24 directors who were there and who were eligible  
13:20:45 25 to vote, did vote to unanimously approve the

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13:21:49 1 I was not aware of his abstention. I took  
13:21:54 2 these minutes and if it was his will and wish  
13:22:02 3 to have abstained, then he should have told me,  
13:22:06 4 because if you -- he should have told me of  
13:22:09 5 that fact. Because if you look through our  
13:22:11 6 corporate minutes both on the savings and loan  
13:22:14 7 side and on the holding company side, at  
13:22:17 8 various meetings you will see abstentions  
13:22:21 9 noted. That was something that I did on a  
13:22:22 10 regular basis and I made sure I got the names  
13:22:25 11 right.

13:22:27 12 So it was not an act that was  
13:22:30 13 deliberate, it was an act that -- you know, it  
13:22:34 14 was unanimous. He, in fact, declared that it  
13:22:39 15 was unanimous and we moved on. Now, if it was  
13:22:42 16 not unanimous and he didn't vote, or if it was  
13:22:46 17 unanimous of those voting, then he should have  
13:22:48 18 made some comment to the effect that the  
13:22:53 19 transaction is approved by all of those voting  
13:22:57 20 and I abstained, or what have you. He didn't  
13:23:00 21 do that.

13:23:07 22 As the minute taker, I don't  
13:23:07 23 believe -- and I'm not trying to absolve myself  
13:23:07 24 of anything here -- I don't believe that that  
13:23:08 25 was my responsibility to try to drag out of him

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13:20:49 1 transaction, but I abstained. Do you think  
13:20:51 2 that would have been better?

13:20:57 3 A. If it is his testimony and intent  
13:21:01 4 to have abstained, yes. If he purposely, if he  
13:21:06 5 purposely did not -- if he purposely did not  
13:21:13 6 vote, then I believe that should have been  
13:21:15 7 disclosed, yes, sir.

13:21:16 8 Q. Okay.

13:21:17 9 A. I believe that.

13:21:18 10 Q. It is his testimony that he  
13:21:19 11 purposely did not vote, because he said he  
13:21:22 12 never voted. He voted only to break ties and  
13:21:24 13 he couldn't remember any ties. And he  
13:21:26 14 purposely did not vote on this transaction or  
13:21:29 15 any other transaction during the time he was  
13:21:32 16 OHSL Chairman, although some people seem to  
13:21:35 17 remember him breaking a tie.

13:21:37 18 A. Yes, he broke ties.

13:21:38 19 Q. It was his testimony that he did  
13:21:39 20 not vote ever.

13:21:41 21 A. Okay.

13:21:43 22 Q. Okay. Why wasn't this disclosed  
13:21:45 23 to the shareholders?

13:21:47 24 MR. RAMSEY: Objection.

13:21:48 25 A. I'm going to reiterate it again.

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13:23:11 1 that he didn't vote in the transaction. It  
13:23:13 2 never crossed my mind, because the man was for  
13:23:16 3 the transaction very early on in the process.  
13:23:20 4 So I would have never dreamt that at the, at  
13:23:25 5 the final meeting when everything -- we had  
13:23:28 6 done literally everything to be done except  
13:23:30 7 take the final vote, that he would, he would  
13:23:33 8 abstain from that vote. That never crossed my  
13:23:35 9 mind until you raised the question right here  
13:23:38 10 along, with Mr. McKiernan not being at the  
13:23:41 11 meeting.

13:23:41 12 Q. Was Charlie Crowley in the room  
13:23:44 13 when the vote was taken?

13:24:05 14 A. For the actual vote, I'm not sure  
13:24:07 15 whether he had stepped out, but I believe that  
13:24:11 16 they both were there, that Charlie and Jeff  
13:24:16 17 were there.

13:24:16 18 Q. How about Cliff Roe?

13:24:18 19 A. Yes, he was there. That I know,  
13:24:20 20 but Mr. -- but Mr. Crowley and Mr. Moritz were  
13:24:25 21 in and out, making phone calls, so there is a  
13:24:28 22 possibility he was not in the room. I, I am  
13:24:31 23 not certain of that, but Cliff was there, yes.

13:24:37 24 Q. Okay. Based on what I've told you  
13:24:39 25 today, do you believe that the 8/2/99 special

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13:24:46 1 meeting of the Board of Directors unanimously  
 13:24:48 2 approved the acquisition between OHSL and  
 13:24:51 3 Provident?

13:24:52 4 MR. RAMSEY: Objection.

13:24:54 5 A. My personal opinion is yes,  
 13:24:56 6 whether he says he did or didn't. The one  
 13:24:58 7 absent party was totally in favor of it and the  
 13:25:02 8 Chairman of the Board was in favor of it.  
 13:25:04 9 Whether there is a legal issue there that can  
 13:25:06 10 be brought is something totally out of my  
 13:25:09 11 purview, but yes, I believe that the  
 13:25:13 12 transaction was unanimously approved.

13:25:18 13 Q. Okay. To approve a transaction  
 13:25:20 14 unanimously or otherwise, what does it take?

13:25:24 15 A. It takes a quorum of the Board and  
 13:25:26 16 then a majority of that quorum to approve it,  
 13:25:29 17 is my understanding.

13:25:31 18 Q. When you say a majority of the  
 13:25:32 19 quorum, you're talking about votes, correct?

13:25:34 20 A. Correct. If there -- if a quorum  
 13:25:36 21 is established at five, it would take three of  
 13:25:38 22 that five.

13:25:39 23 Q. Right. And you testified that you  
 13:25:41 24 still felt that this was a unanimous approval  
 13:25:43 25 of the transaction. Is that your testimony?

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13:27:07 1 approved, that would have clarified that. As  
 13:27:09 2 to Norb's actions, I can't address that. I  
 13:27:15 3 still find that difficult that he, he didn't  
 13:27:19 4 vote one way or the other for the transaction,  
 13:27:22 5 but that -- again, that's something that he has  
 13:27:24 6 stated and that's fine. That's -- that's the  
 13:27:28 7 position he took.

13:27:29 8 Then I believe that the term  
 13:27:32 9 unanimously should have been stricken from this  
 13:27:34 10 document and, and reread and reread and reread  
 13:27:40 11 at all levels, this page. And that should have  
 13:27:43 12 been taken out of it. Mr. McKiernan, I  
 13:27:46 13 believe, was back in town before it was printed  
 13:27:48 14 and he should have said something as well.

13:27:50 15 Q. How about Mr. Roe? How could he  
 13:27:53 16 let this document go out if he was in the room  
 13:27:55 17 and he knew that it was not a unanimous vote?

13:27:57 18 MR. RAMSEY: Objection.

13:27:59 19 A. How could he do that? I don't  
 13:28:01 20 know. He read the document as well. That  
 13:28:02 21 would be a question for Mr. Roe.

13:28:14 22 Q. Now, you had previously voted to  
 13:28:16 23 abstain at the July 22nd, 1999 Board meeting.  
 13:28:22 24 Do you remember that?

13:28:22 25 A. Yes, sir.

13:25:48 1 A. Yes, sir.

13:25:48 2 Q. Okay. And that surprised me, and  
 13:25:50 3 I'd just like you to explain for the record, if  
 13:25:54 4 you have two people who didn't vote, one who is  
 13:25:57 5 not there and one who abstained, how you can  
 13:26:01 6 sit here under oath and say that you still  
 13:26:03 7 believe it's a unanimous approval? I  
 13:26:06 8 understand that they were in favor of it, but  
 13:26:07 9 that's not what this part of the sentence  
 13:26:10 10 refers to, is it?

13:26:11 11 A. As I -- as I mentioned, from a  
 13:26:16 12 legal standpoint, the term unanimously here is  
 13:26:22 13 obviously causing you and probably is causing  
 13:26:25 14 other folks difficulty. But, but it is my  
 13:26:30 15 testimony today that if all seven directors  
 13:26:35 16 were sitting around this table and this  
 13:26:39 17 question had been raised of them prior to the  
 13:26:41 18 taking of the vote, that all seven would have  
 13:26:48 19 unanimously -- would have voted for the  
 13:26:49 20 transaction.

13:26:53 21 Again, it is, it is a  
 13:26:54 22 misstatement, as you pointed out, that Mr.  
 13:26:58 23 McKiernan was not there. So something to the  
 13:27:01 24 effect, I guess, that the Board members present  
 13:27:05 25 at the meeting or something, unanimously

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13:28:23 1 Q. Let me place what has been marked  
 13:28:26 2 as Brinker Deposition Exhibit Number 3 in front  
 13:28:28 3 of you. Have you seen that document before?

13:28:31 4 A. Yes, sir.

13:28:31 5 Q. Are you familiar with it?

13:28:31 6 A. Yes, sir.

13:28:32 7 Q. Do you recognize it?

13:28:35 8 A. Yes, sir.

13:28:35 9 Q. What is Brinker Deposition Exhibit  
 13:28:37 10 Number 3?

13:28:37 11 A. It is a copy of the special  
 13:28:39 12 meeting minutes of the Board of Directors of  
 13:28:42 13 OHSL of July 22nd, 1999.

13:28:47 14 Q. And at this point, when this vote  
 13:28:48 15 was taken, you did not have your change of  
 13:28:51 16 control contract in place, correct?

13:29:04 17 A. Let me review where we are here.  
 13:29:22 18 I believe that's correct.

13:29:24 19 Q. And on August 2nd, 1999, you did  
 13:29:28 20 have your change of control contract in place,  
 13:29:30 21 correct?

13:29:31 22 A. Yes, sir, that's correct.

13:29:32 23 Q. And the change of control contract  
 13:29:34 24 called for a payment of 375,000 by Provident to  
 13:29:39 25 you, correct?

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13:29:40 1 A. Yes, sir. In essence that's what  
13:29:42 2 it did. It did not name Provident  
13:29:45 3 specifically, but by anyone that would take us  
13:29:48 4 over, that's correct. Ultimately it was  
13:29:50 5 Provident, yes.

13:29:52 6 Q. Okay. Why did you change your  
13:29:53 7 vote from abstaining on July 22nd, to in favor  
13:29:55 8 of on August 2nd, 1999?

13:29:59 9 A. We had, we had discussed the  
13:30:03 10 ramifications of dissenting votes when we came  
13:30:09 11 to publication. And for the benefit of the --  
13:30:14 12 it was the opinion of certain individuals that  
13:30:19 13 if you had a dissenting vote, that could carry  
13:30:27 14 some distinct ramifications that might, in  
13:30:30 15 fact, cause difficulties down the road in the  
13:30:33 16 transaction. So, so in essence, I just gave  
13:30:36 17 up. I felt as the last ditch effort on July  
13:30:41 18 22nd, I would, I would vote -- or I would  
13:30:46 19 abstain from the vote. And by August 2nd, I  
13:30:50 20 just gave in and I voted for the transaction.

13:30:54 21 Q. You said in your previous answer,  
13:30:56 22 "we had discussed the ramifications of  
13:30:58 23 dissenting votes." First let me ask you, who  
13:31:01 24 does the "we" refer to in that answer?

13:31:03 25 A. I had talked with different

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13:32:26 1 A. Yes.

13:32:27 2 Q. Do you remember what you said and  
13:32:28 3 what he said? If words, fine; if substance,  
13:32:32 4 also fine.

13:32:33 5 A. It was just general conversations  
13:32:34 6 that again, we had talked about, you know, all  
13:32:40 7 of those people that were in favor of the  
13:32:43 8 transaction and that -- not that we were going  
13:32:46 9 to vote unanimously for it, but that it was  
13:32:50 10 going to pass and there was no -- there was no  
13:32:56 11 reason to, when it come down to the final vote,  
13:32:59 12 to fight, to fight the transaction. We were  
13:33:02 13 totally outnumbered. We did not have the  
13:33:07 14 backing or the means from a fiscal standpoint  
13:33:12 15 to try to do anything.

13:33:13 16 Q. When you said "we" in your  
13:33:15 17 previous answer, to whom were you referring to?

13:33:18 18 A. Those folks on management and in,  
13:33:22 19 and in the company that might try to keep the  
13:33:26 20 thing glued together.

13:33:27 21 Q. Well, how about at the Board  
13:33:29 22 level?

13:33:29 23 A. Didn't approach anyone at the  
13:33:31 24 Board level about that.

13:33:33 25 Q. Okay. Did you talk to Cliff Roe

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13:31:06 1 individuals. I had talked with my management  
13:31:08 2 team. I had talked with some independent  
13:31:14 3 outside counsel and other folks. The majority  
13:31:19 4 of professionals agree that a transaction is,  
13:31:24 5 is viewed, in the general public's eye, to be a  
13:31:30 6 cohesive transaction if, in fact, everybody  
13:31:34 7 votes unanimously.

13:31:35 8 Now, counter to that, if, you  
13:31:40 9 know, if I personally were going to try to stop  
13:31:44 10 the transaction, then, you know, you would vote  
13:31:50 11 against it and you would try to garner votes  
13:31:52 12 and do those types of things. And that was not  
13:31:55 13 my intent. It was going to go, it was evident  
13:31:58 14 that it was going to go.

13:32:01 15 My opposition was -- my vehement  
13:32:04 16 opposition was voiced before the marketing book  
13:32:07 17 was put together. Once the marketing book was  
13:32:10 18 out in the hands of those people who were  
13:32:14 19 interested in the transaction, I guess one  
13:32:17 20 would say I had given up. I had given up the  
13:32:20 21 fight.

13:32:21 22 Q. Okay. You said you talked with  
13:32:21 23 your management team about this.

13:32:24 24 A. Yes.

13:32:24 25 Q. Did you talk with Terry Todd?

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13:33:35 1 about this very point?

13:33:36 2 A. About a unanimous vote?

13:33:39 3 Q. Or the ramifications of dissenting  
13:33:41 4 votes.

13:33:42 5 A. No, sir.

13:33:43 6 Q. You said you talked to your  
13:33:44 7 outside counsel.

13:33:45 8 A. Um-hmm.

13:33:45 9 Q. That's the person from Vorys,  
13:33:47 10 Sater?

13:33:48 11 A. No, I talked with some other  
13:33:49 12 individuals.

13:33:50 13 Q. Okay. With whom did you speak?

13:33:52 14 A. I talked with Bill Sulau, who  
13:33:54 15 is -- was our corporate counsel at Oak Hills.  
13:34:00 16 And I also talked with, with Barry Forrester,  
13:34:07 17 who is not an attorney, but I sought him as  
13:34:10 18 counsel, just in the general sense of the word  
13:34:12 19 counsel.

13:34:12 20 Q. Now, when you say Bill Sulau, is  
13:34:15 21 there an older Bill Sulau who's in his  
13:34:18 22 seventies or eighties?

13:34:20 23 A. A Charles Sulau, his father.

13:34:22 24 Q. But this Sulau --

13:34:24 25 A. Is his son.



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13:34:25 1 Q. And he's an attorney?

13:34:26 2 A. Yes, sir.

13:34:27 3 Q. And what did you say to him and

13:34:28 4 what did he say to you?

13:34:29 5 A. Again, we just -- in general, we

13:34:31 6 chatted about the transaction. He had -- on

13:34:36 7 one occasion he called and stated his father

13:34:39 8 was upset about the transaction. And I said

13:34:45 9 his father was not alone and that, you know, it

13:34:53 10 was going to go and, you know, it was to the

13:34:55 11 benefit of everyone at this point in time,

13:34:57 12 unless we were going to launch some, some major

13:35:00 13 undertaking, to go along with the transaction.

13:35:04 14 Q. Okay. How about with Barry

13:35:06 15 Forrester?

13:35:07 16 A. Um-hmm.

13:35:07 17 Q. What did you say to him and what

13:35:09 18 did he say to you?

13:35:14 19 A. There's no way that I could

13:35:14 20 capsule those discussions. Those discussions

13:35:14 21 went over years. I mean, we -- we talked about

13:35:19 22 different transactions on many occasions, and

13:35:26 23 the fact that -- before we ever got far into

13:35:31 24 this process, marketing books weren't out, I

13:35:36 25 mean nothing was really happening.

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13:36:53 1 Q. Okay. Between July 22nd, 1999 and

13:36:56 2 August 2nd, 1999, did you feel like you had

13:36:59 3 lost an ally with the resignation of Mr.

13:37:04 4 Herron?

13:37:05 5 A. I was saddened to see Mr. Herron

13:37:08 6 go. I don't think I lost an ally. I think

13:37:14 7 he's still in agreement that the transaction

13:37:16 8 wasn't in the best interest and just did not --

13:37:22 9 I guess to answer your question succinctly, I

13:37:27 10 don't feel I lost an ally, I believe he is

13:37:29 11 still an ally. He didn't change his mind.

13:37:35 12 Yes, I, I lost him in the fact that he was not

13:37:39 13 on the Board at the time of the vote, but I

13:37:44 14 don't think that would have made any

13:37:45 15 difference.

13:37:46 16 Q. Okay. Between July 22nd, 1999 and

13:37:48 17 August 2nd, 1999, did you have any discussions

13:37:52 18 with Mr. Zoellner about what was going to

13:37:57 19 happen at the next special meeting?

13:38:01 20 A. Not that I can recall.

13:38:06 21 Q. Did you perceive Mr. Zoellner as

13:38:09 22 voting in favor of this transaction only

13:38:12 23 reluctantly?

13:38:13 24 A. Yes. Mr. Zoellner was a proponent

13:38:16 25 of continuing an independent operation.

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13:35:39 1 He had talked about different

13:35:41 2 transactions throughout the country that --

13:35:42 3 where the management was not on board with the

13:35:47 4 transaction and, and how it would literally --

13:35:51 5 it can take a transaction apart and that it was

13:35:54 6 to the benefit of our Board to, first of all,

13:35:56 7 have management on board, have them locked up

13:36:01 8 with, with contracts. And then at the same

13:36:06 9 time, he was quite taken aback that McDonald

13:36:11 10 had not required --

13:36:15 11 Q. The opinion of management in the

13:36:17 12 document?

13:36:17 13 A. No, no, no. I cannot think of the

13:36:21 14 term, voting agreements.

13:36:24 15 Q. Oh.

13:36:25 16 A. That, in fact, prior to entering

13:36:27 17 into the transaction or coming down to the last

13:36:29 18 day, August 2, if you will, that they had not

13:36:34 19 required those to be executed, because in a lot

13:36:37 20 of documents you see that, and that never came

13:36:40 21 to fruition in our transaction.

13:36:43 22 Q. Okay. Other than what you've

13:36:44 23 mentioned, anyone else you can recall talking

13:36:47 24 to about ramifications of dissenting votes?

13:36:50 25 A. I don't believe so.

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13:38:20 1 Q. Despite his vote as a director in

13:38:22 2 favor of the transaction?

13:38:23 3 A. Absolutely.

13:38:26 4 Q. Then why did he vote in favor of

13:38:27 5 the transaction as a director?

13:38:29 6 MR. RAMSEY: Objection.

13:38:29 7 A. That would be a question you'd

13:38:31 8 have to ask Howard.

13:38:41 9 Q. Mr. Hanauer, if I can sum this up,

13:38:44 10 it seems to me that you've learned for the

13:38:46 11 first time here today that Mr. Brinker did not

13:38:48 12 vote in the transaction on August 2nd, 1999 at

13:38:54 13 the special meeting, at least as per his

13:38:58 14 testimony; is that fair?

13:38:59 15 A. That's my testimony.

13:39:01 16 Q. And you did not remember at our

13:39:08 17 prior sessions and until I put the minutes in

13:39:13 18 front of you, that Mr. McKiernan was out of the

13:39:16 19 country on August 2nd, 1999 and, therefore, did

13:39:20 20 not vote to approve the transaction on August

13:39:22 21 2nd, 1999, correct?

13:39:25 22 MR. RAMSEY: Objection.

13:39:25 23 A. That is correct.

13:39:26 24 Q. But you weren't the only one who

13:39:28 25 was assembling these documents who would have

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13:39:30 1 or should have known these facts, correct?

13:39:33 2 MR. RAMSEY: Objection.

13:39:35 3 A. That should have known that these  
13:39:37 4 people were out of town?

13:39:39 5 Q. Well, only Mr. McKiernan was out  
13:39:41 6 of town.

13:39:42 7 A. Okay.

13:39:43 8 Q. But --

13:39:44 9 A. Or that he didn't -- I don't know.

13:39:47 10 Let's address Norb's voting, nonvoting -- the  
13:39:52 11 nonvoting issue. I don't know that anyone was  
13:39:58 12 aware or not aware of the fact of how he voted  
13:40:04 13 or did not vote, abstained in this case.

13:40:07 14 Because again, in the minutes it was not -- it  
13:40:11 15 was not pointed out that that's, in fact, how  
13:40:14 16 it should be.

13:40:15 17 And it's ironic that the minutes,  
13:40:17 18 I believe this is the last minutes before  
13:40:19 19 August 2, I did just as I testified, point out  
13:40:24 20 when we had negative votes, you saw that. And  
13:40:28 21 when we had abstentions, you saw that. So it  
13:40:32 22 was -- you know, it was not a -- any action on  
13:40:36 23 my part to try to conceal the fact that, that  
13:40:42 24 Norb did not vote.

13:40:47 25 Q. How about Mr. McKiernan being out

13:40:49 1 of town? I mean, with all of the people who  
13:40:51 2 looked at this document, referring to the proxy  
13:40:53 3 materials and the prospectus, how was that  
13:40:58 4 missed?

13:40:59 5 A. I can't answer that. Again, we  
13:41:03 6 reviewed and did not sit there and head count  
13:41:09 7 when it came down to a statement of  
13:41:12 8 unanimously -- unanimously approved. How was  
13:41:17 9 it? I don't know. That's something that  
13:41:22 10 again, in hindsight, I would think that someone  
13:41:30 11 possibly could have mentioned, you know, Tom  
13:41:31 12 was -- Tom was in Europe, that's not correct.

13:41:37 13 I believe you stated it was Tom's  
13:41:38 14 testimony that, that he felt unanimously meant  
13:41:43 15 of those present and able to vote at that point  
13:41:47 16 in time. So if that's the case, was that the  
13:41:51 17 feeling of everyone else in the room and  
13:41:53 18 everyone else that looked at this document, you  
13:41:55 19 know.

13:41:58 20 I would have to exonerate my  
13:41:58 21 management team who reviewed the document, they  
13:42:01 22 didn't know, you know, who was at the meeting  
13:42:05 23 and who wasn't, so I don't think they were  
13:42:07 24 aware that Tom was out of the country, maybe  
13:42:09 25 they were. But again, when you start putting

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13:42:10 1 this document together, that's the furthest  
13:42:18 2 thing from your mind that there was someone  
13:42:20 3 absent from this meeting that was -- I believe  
13:42:23 4 if it had been a -- had Tom Herron, who was  
13:42:31 5 opposed to the transaction, not been at the  
13:42:34 6 meeting, I believe it would have been recalled,  
13:42:43 7 because people could then raise the question,  
13:42:46 8 you took the vote when you knew you could put  
13:42:49 9 unanimous in there because he wasn't there.

13:42:51 10 That is not the case with Mr.  
13:42:52 11 McKiernan. Mr. McKiernan, I believe, would  
13:42:59 12 have voted for the transaction, had he been  
13:43:01 13 given the opportunity to do so, because  
13:43:03 14 certainly he was the one that led McDonald to  
13:43:05 15 us and, and did all the -- did all of the work  
13:43:08 16 and was the proponent of the transaction.

13:43:10 17 Q. Right, absolutely.

13:43:11 18 A. But --

13:43:12 19 Q. Mr. McKiernan's testimony in  
13:43:13 20 substance was, yes, had he been there, he would  
13:43:17 21 have voted in favor of the transaction.

13:43:18 22 A. Okay. Okay.

13:43:19 23 Q. But my question was, why wasn't  
13:43:20 24 that addressed with a footnote or another  
13:43:23 25 sentence?

13:43:23 1 A. It was --

13:43:24 2 MR. RAMSEY: Objection.

13:43:24 3 A. It was missed, just we're human,  
13:43:28 4 it was missed.

13:43:29 5 Q. Okay. Knowing what you know now  
13:43:33 6 and accepting my representation about Mr.  
13:43:35 7 Brinker's nonvote as true, do you have any  
13:43:38 8 problems with this document?

13:43:43 9 MR. RAMSEY: Objection.

13:43:53 10 A. The term unanimously approved is  
13:43:55 11 in there, that is an incorrect term. I believe  
13:43:59 12 we've gone through this thing page after page  
13:44:01 13 and found a couple of other items that were in  
13:44:03 14 there as well, but, but in the overall scheme  
13:44:08 15 of things, I don't think it would have changed  
13:44:10 16 anything.

13:44:11 17 This page is wrong. I believe at  
13:44:17 18 this point in time there's, there's nothing  
13:44:20 19 that could be done to change -- there's nothing  
13:44:23 20 that can be done that is going to change that.

13:44:27 21 Q. Okay. A couple of things. First  
13:44:28 22 of all, if you could limit your answer not to  
13:44:32 23 whether or not you feel that this would have  
13:44:33 24 changed the outcome or anything like that, and  
13:44:36 25 to go back in time, we're sitting here on

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13:44:38 1 August 8th, 2000, let's go back to when this  
13:44:44 2 document was being assembled. Knowing what you  
13:44:46 3 know now, is there anything that you would have  
13:44:48 4 done differently with respect to the ultimate  
13:44:52 5 publication and dissemination of this document?

13:44:55 6 A. Certainly, I would have changed  
13:44:56 7 that paragraph to read correctly.

13:44:58 8 Q. Okay. And how would you have  
13:45:00 9 changed that paragraph? What language would  
13:45:01 10 you use?

13:45:03 11 A. Well, if it would have -- if I  
13:45:05 12 would have known, first of all, that the  
13:45:06 13 Chairman of the Board would have abstained, I  
13:45:09 14 would have called on an attorney to write that  
13:45:12 15 paragraph.

13:45:14 16 Q. Okay. Well, I can't write it, so  
13:45:15 17 what language would you use?

13:45:17 18 A. I don't know. I don't think --  
13:45:18 19 and again, I didn't write it, I don't think  
13:45:19 20 that's relevant. What would I have done, that  
13:45:22 21 the Chairman of the Board was too chicken to  
13:45:25 22 vote yes or no on the transaction? I don't  
13:45:27 23 know.

13:45:28 24 I mean, it was his, it was his --  
13:45:29 25 it was his wish that we forward -- that went

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13:46:30 1 happened to his company, if you will. And  
13:46:34 2 quite frankly, a year later with his net worth  
13:46:38 3 being tapped away as it's been, he's probably  
13:46:41 4 got some second thoughts on the thing, but you  
13:46:44 5 have to move -- you have to move on.

13:46:46 6 For him to say that he didn't vote  
13:46:48 7 for the transaction, the shareholders did -- he  
13:46:51 8 had the wherewithal to stop that. It would  
13:46:54 9 have never gotten there if he had had any, any  
13:47:01 10 backbone at all as we went through the whole  
13:47:01 11 process. We would have never gotten to the  
13:47:01 12 process in the first place, had he not been in  
13:47:05 13 favor of it.

13:47:07 14 Q. Okay. Mr. Hanauer, let's see if I  
13:47:09 15 can rewrite this sentence and this paragraph.  
13:47:12 16 You said it should have written by a lawyer,  
13:47:14 17 let me throw some things out and we'll see if  
13:47:16 18 you agree or disagree that this would be more  
13:47:18 19 informative and more accurate.

13:47:20 20 A. Can I ask you a question before  
13:47:21 21 you start that? What is the relevance of doing  
13:47:25 22 this? Why, why are we writing -- why are we  
13:47:30 23 writing this? You know, I have testified that  
13:47:34 24 paragraph is wrong, I would have rewritten it.  
13:47:40 25 If, if it had been, to my recollection, that

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13:45:34 1 forward with this whole transaction. Now  
13:45:36 2 you're telling me we got to the last day and he  
13:45:39 3 backed away. That's starting to get under my  
13:45:42 4 crawl a little bit.

13:45:43 5 Q. Well, actually I think he did more  
13:45:45 6 than back away, because he attempted to shift  
13:45:46 7 responsibility for the merger from the Board of  
13:45:49 8 Directors to the shareholders, because he  
13:45:51 9 testified in substance, I didn't vote for this,  
13:45:55 10 I didn't approve this transaction, it was the  
13:45:57 11 shareholders, they voted for this, what could I  
13:45:59 12 do. That seemed to be his testimony in  
13:46:03 13 substance.

13:46:04 14 A. He could have stopped it, it would  
13:46:05 15 have never --

13:46:06 16 MR. RAMSEY: Objection. Assumes  
13:46:06 17 facts not in evidence.

13:46:08 18 A. Yeah, I don't -- I don't know what  
13:46:09 19 his testimony was, but quite frankly he had --  
13:46:13 20 I -- he was given many opportunities to, to  
13:46:17 21 shut this whole transaction down. And he  
13:46:19 22 couldn't get some of his other directors under,  
13:46:22 23 under control and so, sure, he has seen --  
13:46:26 24 hindsight is wonderful.

13:46:28 25 He has seen the -- what has

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13:47:44 1 Mr. McKiernan wasn't there, certainly we would  
13:47:46 2 have noted that. Had I known that Mr. Brinker  
13:47:51 3 abstained from the vote, we would have put that  
13:47:56 4 in there. I will stipulate to all that. Why  
13:47:59 5 are we wasting time on this paragraph?

13:48:03 6 Q. Okay. I'll accept what you just  
13:48:05 7 said. How about Mr. Herron's resignation, is  
13:48:08 8 there anything --

13:48:08 9 A. Absolutely not. Mr. Herron was  
13:48:11 10 not a part of the Board on August the 2nd. And  
13:48:15 11 everybody knows that, and we've talked about  
13:48:18 12 that up one side and down the other for the  
13:48:21 13 last several times I've been here. And there's  
13:48:24 14 nothing we can do.

13:48:27 15 We disclosed, albeit in somewhat  
13:48:30 16 of a left-handed format, that he was not on  
13:48:32 17 the, on the Board, because he's not listed as a  
13:48:36 18 Board member. Did we disclose that Mr. Herron  
13:48:40 19 several days before the vote was taken,  
13:48:42 20 tendered his resignation? We did not. That is  
13:48:47 21 something that was brought up with our legal  
13:48:49 22 counsel and they felt that it should stay out  
13:48:52 23 of the document and we left it out. That's  
13:48:54 24 something I broached with him and he said leave  
13:48:58 25 it out and we did not dwell on that. It's

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13:49:02 1 immaterial to the transaction, his opinion.

13:49:05 2 And that's what we did.

13:49:07 3 Q. Why do you say "it's immaterial to  
13:49:09 4 the transaction"?

13:49:10 5 A. I didn't say that, Cliff said  
13:49:13 6 that.

13:49:14 7 Q. Oh, excuse me.

13:49:15 8 A. Cliff said it's immaterial to the  
13:49:17 9 transaction, I didn't say that.

13:49:19 10 Q. Did you agree with that?

13:49:23 11 A. Having talked with Barry  
13:49:24 12 Forrester, Barry felt that it was a  
13:49:27 13 misstatement of fact, I think was his  
13:49:30 14 phraseology, that -- or a -- he had another  
13:49:35 15 term, may have been that we had left something  
13:49:37 16 out in not openly disclosing that Mr. Herron  
13:49:45 17 had left the Board, had resigned from the  
13:49:48 18 Board.

13:49:49 19 People could infer, the  
13:49:52 20 shareholders could infer a lot of things from  
13:49:54 21 that, but I don't think it's something that,  
13:49:59 22 that correctly warranted on the face of this  
13:50:03 23 document in bold print, Tom Herron resigned  
13:50:06 24 from the Board. And I don't think it belonged  
13:50:09 25 on the first page or the second. It belonged

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13:51:18 1 against this transaction on July 22nd, 1999.  
13:51:23 2 Shortly thereafter, he tendered his resignation  
13:51:28 3 effective July 30th, 1999. Did you ever say,  
13:51:30 4 let's be fair, let's tell the shareholders  
13:51:33 5 exactly what the deal is?

13:51:34 6 A. No, because we didn't disclose any  
13:51:36 7 votes other than the August 2 vote. So no, it  
13:51:39 8 was not -- no.

13:51:47 9 Q. Okay. I previously sent you Mr.  
13:51:49 10 Condren's deposition. Have you had time to  
13:51:51 11 review that?

13:51:52 12 A. Yeah. What was the purpose of  
13:51:53 13 that?

13:51:54 14 Q. Just so you can be fully informed.  
13:51:56 15 Do you have any --

13:51:57 16 A. Of what?

13:52:02 17 Q. To refresh your recollection.

13:52:04 18 A. I'd like to have seen some of the  
13:52:05 19 other ones rather than Pat's, but that's okay.

13:52:09 20 Q. You tell me --

13:52:09 21 A. No.

13:52:10 22 Q. -- what depositions you'd like to  
13:52:11 23 see, I'd be happy to send them to you.

13:52:14 24 A. I really don't. Let's not kill  
13:52:15 25 any more trees. Yeah, I got his deposition.

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13:50:11 1 possibly in the Board makeup piece back here,  
13:50:13 2 that he had, in fact, tendered his resignation.

13:50:17 3 That is something that Cliff said  
13:50:20 4 and he certainly, I hope, knows a lot more  
13:50:25 5 about law than I do, said it was something that  
13:50:28 6 did not need to be in the document and,  
13:50:30 7 therefore, it is not in the document.

13:50:33 8 Q. Okay. And Mr. Roe gave you his  
13:50:35 9 legal guidance, correct?

13:50:36 10 A. He gave me his opinion that, and I  
13:50:39 11 called him under the guise of seeking his legal  
13:50:42 12 opinion, yes.

13:50:43 13 Q. Okay.

13:50:44 14 A. I was billed for that, so I would  
13:50:45 15 say it was legal, yes.

13:50:48 16 Q. Okay. Let's put aside legal. You  
13:50:50 17 talked about how you disclosed -- you felt you  
13:50:53 18 disclosed Mr. Herron's resignation in some kind  
13:50:57 19 of a left-handed fashion. Let's talk purely  
13:51:00 20 from a fairness point of view. You have  
13:51:02 21 testified earlier that you said you're a fair  
13:51:04 22 man. Did you ever suggest to Mr. Roe or to  
13:51:06 23 anyone, hey, let's not do this in a left-handed  
13:51:10 24 fashion, let's say Mr. Herron did not agree  
13:51:16 25 with the direction of the company, he voted

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13:52:22 1 Q. Do you have any comments on his  
13:52:22 2 deposition?

13:52:22 3 A. He, he seemed to take the middle  
13:52:24 4 road on a few things and exonerated himself  
13:52:27 5 from some of the -- some of the things, but in  
13:52:29 6 all it was relatively factual. People's  
13:52:32 7 opinion, everybody's opinion is different, I  
13:52:34 8 guess, of their capabilities and how they're  
13:52:37 9 treated and so forth.

13:52:38 10 I think as it relates to the  
13:52:40 11 transaction, from a Board standpoint, Pat was  
13:52:47 12 not treated fairly, his opinion was not  
13:52:49 13 requested. His opinion -- his opinion was not  
13:52:52 14 valued by the Board, and so subsequently I  
13:52:57 15 could see why he'd -- he drew some of the  
13:53:06 16 opinions of me and of the Board that he did.  
13:53:09 17 That's something that I have to shoulder.

13:53:15 18 Q. Did his testimony with respect to  
13:53:17 19 the actions of Al Hucke several days before  
13:53:20 20 October 25th, 1999 and the special meeting of  
13:53:25 21 shareholders to approve the transaction, did  
13:53:27 22 that surprise you in any way?

13:53:29 23 MR. RAMSEY: Objection.

13:53:29 24 A. I'm not sure exactly what, what  
13:53:31 25 actions Pat referred to with Al, other than --



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13:53:36 1 if you're referring to, you know, wanting to  
13:53:42 2 procure a list to contact shareholders. Did  
13:53:45 3 that surprise me? No. I was aware of the fact  
13:53:51 4 that he was doing that.

13:53:52 5 Q. How about the threats to fire Pat  
13:53:54 6 Condren and the entire management team if this  
13:53:57 7 deal blew up for any reason other than  
13:53:59 8 Provident's stock price at that time, in the  
13:54:02 9 last days before October 25th?

13:54:06 10 MR. RAMSEY: Objection.

13:54:06 11 A. That didn't surprise me in reading  
13:54:08 12 that. Mr. Huckle blatantly and in public  
13:54:12 13 threatened to fire me on several occasions. So  
13:54:14 14 that didn't -- you know, long before -- Mr.  
13:54:17 15 Huckle, just a little piece of history, if you  
13:54:19 16 will.

13:54:19 17 Mr. Huckle was the one that was  
13:54:21 18 instrumental in terminating our employment  
13:54:23 19 contracts several years prior. And he has a  
13:54:27 20 history of labor-management difficulties, I  
13:54:36 21 guess would be the proper phraseology. And so,  
13:54:39 22 you know, he was -- from that standpoint, he  
13:54:45 23 was a detractor to the company.

13:54:47 24 Had he focused his energies in a  
13:54:49 25 positive light, you know, things would have,

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13:56:11 1 form and substance, okay. I understand what  
13:56:13 2 you're saying.

13:56:14 3 Q. My question now is that was not  
13:56:16 4 true, meaning the Board had not met that week  
13:56:18 5 and had not come to the conclusion that you and  
13:56:21 6 the entire management team would be fired if  
13:56:24 7 this transaction did not go through for any  
13:56:27 8 reason other than Provident's stock price,  
13:56:30 9 correct?

13:56:31 10 MR. RAMSEY: Objection.

13:56:32 11 A. I, I will -- I will testify that  
13:56:38 12 the Board had not met formally where I was  
13:56:43 13 present and minutes were taken. If they got  
13:56:46 14 together, being any number of the Board, if  
13:56:49 15 they got together -- I mean that certainly is  
13:56:52 16 possible, because that happened frequently.  
13:56:57 17 That is possible and that could be a very true  
13:57:00 18 statement. I was -- I am unaware that they had  
13:57:04 19 met and I am unaware of any vote, if you will,  
13:57:06 20 that had been taken.

13:57:11 21 MR. BRAUTIGAM: Okay. Mr.  
13:57:11 22 Hanauer, I don't have anything further for you  
13:57:14 23 at this time.

13:57:15 24 THE WITNESS: Okay.

13:57:15 25 MR. BRAUTIGAM: And I would like

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13:54:54 1 would have transpired a lot differently than  
13:54:57 2 they did. But Mr. Huckle was one that didn't  
13:55:01 3 like to relinquish power and, in fact, in  
13:55:04 4 several Board meetings when we were offering  
13:55:07 5 opinions, he stood up and threatened me and  
13:55:10 6 told me that I could be found insubordinate.

13:55:14 7 And I pointed out to him at that  
13:55:16 8 point in time that when we sat around the  
13:55:18 9 table, we were all equals and that he really  
13:55:21 10 should sit down and gather his thoughts before  
13:55:23 11 he came at me again in that manner, because I  
13:55:27 12 was not a subordinate of his when we sat in the  
13:55:30 13 boardroom, I was an equal of his. So he had --  
13:55:35 14 he had difficulties with us.

13:55:36 15 Q. If you remember the specific  
13:55:37 16 testimony, Mr. Huckle told Mr. Condren that if  
13:55:42 17 this deal collapsed, the entire Board would --  
13:55:46 18 excuse me, the entire management team would be  
13:55:49 19 fired, and that the Board had met and he had  
13:55:52 20 the Board's backing to make these  
13:55:54 21 representations in substance. Do you remember  
13:55:56 22 in substance that testimony?

13:55:58 23 MR. RAMSEY: Objection.

13:56:00 24 A. I do not draw immediately on, on  
13:56:04 25 that, but I will accept that, that in there in

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13:57:16 1 to close this deposition and wrap it up  
13:57:18 2 completely.

13:57:19 3 THE WITNESS: Okay.

13:57:19 4 MR. BRAUTIGAM: But I cannot do  
13:57:20 5 that because full discovery has not been made,  
13:57:23 6 meaning there are several things that you have  
13:57:26 7 referenced as existing that presumably are in  
13:57:29 8 the hands of KMK that I have not received. And  
13:57:31 9 I am going to shut it down for today.

13:57:35 10 THE WITNESS: Okay.

13:57:36 11 MR. BRAUTIGAM: And I'll take that  
13:57:36 12 up with Mr. Burke and Jamie and see what the  
13:57:39 13 deal is.

13:57:40 14 THE WITNESS: Okay. Are these  
13:57:41 15 documents that I had referenced earlier?

13:57:43 16 MR. BRAUTIGAM: For example, one  
13:57:44 17 was a lavender legal pad and there was several  
13:57:47 18 other references in your deposition to  
13:57:50 19 documents that I have not received.

13:57:52 20 THE WITNESS: I'm not sure that  
13:57:53 21 those are in the hands of KMK. Those were  
13:57:56 22 shipped --

13:57:57 23 MR. BRAUTIGAM: To Dinsmore?

13:57:58 24 THE WITNESS: To Dinsmore, right.

13:58:07 25 MR. BRAUTIGAM: Right.



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13:58:07 1 THE WITNESS: So I won't blame  
 13:58:07 2 them. I don't know that they're there. They  
 13:58:07 3 may be in Dinsmore's --  
 13:58:07 4 MR. BRAUTIGAM: As per my  
 13:58:09 5 understanding of the testimony, they existed.  
 13:58:10 6 THE WITNESS: They existed.  
 13:58:11 7 MR. BRAUTIGAM: You were very  
 13:58:12 8 specific about where you last saw them, they  
 13:58:16 9 were shipped to Dinsmore and I'm assuming the  
 13:58:18 10 material from Dinsmore went to KMK.  
 13:58:21 11 THE WITNESS: Okay.  
 13:58:22 12 MR. RAMSEY: Are you going to be  
 13:58:24 13 calling him again? You don't know?  
 13:58:25 14 MR. BRAUTIGAM: I don't know until  
 13:58:27 15 I get the documents.  
 16 MR. RAMSEY: I have a few  
 17 questions for you.  
 18 EXAMINATION  
 19 BY MR. RAMSEY:  
 13:58:33 20 Q. Now, as a shareholder, you voted  
 13:58:37 21 your shares against the transaction --  
 13:58:39 22 A. That's correct.  
 13:58:40 23 Q. -- because it was your personal  
 13:58:41 24 belief that it was better to remain  
 13:58:44 25 independent?

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14:00:18 1 voted and you'd know how people -- you didn't  
 14:00:21 2 really have to abstain.  
 14:00:22 3 So it was displeasure with, with  
 14:00:25 4 the way that the transaction came about. It  
 14:00:29 5 was not really displeasure with, with the  
 14:00:33 6 ultimate buyer at that point in time, it was  
 14:00:36 7 just voicing displeasure, period. And it was  
 14:00:40 8 something that I felt like I wanted to do.  
 14:00:45 9 Q. Do you believe that the Board of  
 14:00:48 10 Directors, when they voted in favor of this  
 14:00:50 11 transaction, believed that it was in the best  
 14:00:53 12 interest of the shareholders?  
 14:00:55 13 MR. BRAUTIGAM: Objection.  
 14:00:59 14 A. I think so, and certainly I tried  
 14:01:04 15 to give them enough information that we could  
 14:01:10 16 have gotten to this point in a different  
 14:01:13 17 fashion. But do I believe that they thought it  
 14:01:17 18 was in the best interest? I believe they did.  
 14:01:21 19 They had -- and in private  
 14:01:24 20 conversations and around the Board table, you  
 14:01:27 21 know, everybody had some of their own money in  
 14:01:30 22 the transaction or in the company. And I think  
 14:01:35 23 they always looked for a, a bigger return and a  
 14:01:41 24 snappier return -- a quicker, quicker return of  
 14:01:45 25 their money.

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13:58:46 1 MR. BRAUTIGAM: Objection to  
 13:58:46 2 personal belief.  
 13:58:50 3 A. I wanted, I wanted the company in  
 13:58:59 4 the, I guess the original sense -- or the  
 13:59:02 5 deepest sense, I wanted the company to remain  
 13:59:05 6 independent. I also wanted just to express my,  
 13:59:15 7 I guess displeasure with the, the general  
 13:59:20 8 transaction in that way. And so I voted -- so  
 13:59:24 9 I voted against the transaction.  
 13:59:26 10 I don't know. I did not disclose  
 13:59:28 11 that to anyone. I did not run around saying I  
 13:59:35 12 was going to vote for the transaction, but I  
 13:59:37 13 did not disclose to anyone that I was going to  
 13:59:39 14 vote my shares against the transaction, because  
 13:59:42 15 quite frankly, I feel that everyone has, you  
 13:59:47 16 know, their right to vote their shares without  
 13:59:52 17 somebody trying to sway them one way or  
 13:59:56 18 another.  
 13:59:56 19 And it's interesting, it goes back  
 14:00:00 20 to a vote that we had several years ago when  
 14:00:04 21 Mr. Huckle abstained from the voting of his  
 14:00:07 22 shares that year. And when we asked him why  
 14:00:10 23 did you do that, he said I didn't want to taint  
 14:00:12 24 the vote. Well, you could always see what the  
 14:00:15 25 vote was, do the math on how many shares you

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14:01:46 1 I often said when you -- and I'm  
 14:01:50 2 not there, but when you become 70 plus years of  
 14:01:53 3 age, you don't have the staying power, you  
 14:01:57 4 don't have the ability to wait for a return as  
 14:02:00 5 long as a person 50 years old does. And so I  
 14:02:05 6 think they viewed it that way as well, that  
 14:02:09 7 this is a way that, that they could create some  
 14:02:14 8 additional wealth for themselves, as well as  
 14:02:19 9 the shareholders.  
 14:02:20 10 And I think they thought that it  
 14:02:23 11 was the best -- it was purported to them by  
 14:02:25 12 McDonald that it was -- it was a good  
 14:02:27 13 transaction, it was the best transaction and it  
 14:02:30 14 would be good for the shareholders. I think  
 14:02:33 15 they bought into that.  
 14:02:35 16 Q. Okay. Assuming you disagreed with  
 14:02:37 17 the transaction, would you characterize that as  
 14:02:40 18 just a legitimate business disagreement with  
 14:02:43 19 the Board of Directors?  
 14:02:45 20 MR. BRAUTIGAM: Objection.  
 14:02:48 21 A. Yeah, it -- it was a, a legitimate  
 14:02:53 22 disagreement, I think, a business disagreement.  
 14:02:59 23 We had offered up a couple of other  
 14:03:00 24 alternatives and, and it was literally the  
 14:03:04 25 opinion of different folks that this bank is

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14:03:10 1 better, this bank isn't, this bank isn't big  
 14:03:14 2 enough, this bank doesn't have as much --  
 14:03:17 3 enough liquidity, that if I would want to sell  
 14:03:20 4 the majority of my shares at one time, I  
 14:03:23 5 couldn't do that, I would have to wait and do  
 14:03:26 6 that in dribbles and drabs. So I think all in  
 14:03:31 7 all, it was -- it was just a legitimate  
 14:03:34 8 disagreement as to whether it was -- the  
 14:03:39 9 transaction was a good one or bad one.

14:03:48 10 Q. Okay. Do you believe that there  
 14:03:49 11 were any material facts omitted from the proxy  
 14:03:52 12 statement?

14:03:52 13 A. As, as we have gone around and  
 14:03:54 14 around and reviewed those, I believe that there  
 14:04:06 15 could have been some rewording, especially on  
 14:04:10 16 the front page as we talked about today, that  
 14:04:15 17 would have been correct as opposed to the  
 14:04:18 18 document that we have in front of us. Is that  
 14:04:24 19 material? I don't know that I can weigh  
 14:04:28 20 material in that regard.

14:04:31 21 And I have no way of knowing  
 14:04:33 22 whether there would -- whether that would have  
 14:04:36 23 had any other outcome. We've chatted about  
 14:04:40 24 some of the other things within the, within the  
 14:04:46 25 document, Mr. Herron's resignation and those

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14:06:10 1 management agreements. I believe it was  
 14:06:12 2 referred in the document as June when, in fact,  
 14:06:14 3 it was the end of July.

14:06:18 4 I don't know whether that would  
 14:06:19 5 have caused any concern or not. There are  
 14:06:23 6 several people within our organization, Mr.  
 14:06:26 7 Condren was one of them, that believed that,  
 14:06:29 8 you know, the majority of the people when  
 14:06:32 9 they're handed a document that size do not read  
 14:06:34 10 it page for page as the people that wrote it.

14:06:40 11 And as you can see and as we have  
 14:06:43 12 discovered through this process, even reading  
 14:06:46 13 it page for page, line by line, there can be,  
 14:06:50 14 there can be differences of opinion and there  
 14:06:52 15 can be some omissions. I don't think there was  
 14:06:57 16 anything on my part that was deliberately left  
 14:07:01 17 out of the document or misleading. There were  
 14:07:04 18 things that I put in the document that were  
 14:07:06 19 omitted by legal counsel, and that was their  
 14:07:12 20 prerogative to do that.

14:07:18 21 Q. Okay. Is it your testimony that  
 14:07:19 22 this is not necessarily the transaction that  
 14:07:22 23 you would have liked, but in the end, you were  
 14:07:26 24 comfortable with it?

14:07:28 25 MR. BRAUTIGAM: Objection.

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14:04:47 1 types of things. Again, relying on legal  
 14:04:51 2 counsel and, and setting my personal opinion  
 14:04:55 3 aside -- and certainly we paid good money for  
 14:04:58 4 that counsel, he said that those were not  
 14:05:02 5 material to the transaction.

14:05:06 6 And so I guess my, my testimony  
 14:05:10 7 would be that even though a general feeling is  
 14:05:15 8 if you did have a -- if you could have a  
 14:05:18 9 perfect document, there would be a little more  
 14:05:20 10 in it. Whether that constitutes material or  
 14:05:24 11 not, I don't know. I don't know whether it  
 14:05:28 12 does.

14:05:29 13 Q. Is it your testimony that -- is  
 14:05:36 14 there anything about the proxy statement, if  
 14:05:38 15 done differently, that would have changed the  
 14:05:43 16 vote?

14:05:45 17 MR. BRAUTIGAM: Objection. That's  
 14:05:46 18 ridiculous.

14:05:49 19 A. We talked -- one of the things  
 14:05:50 20 that we talked about -- I don't know whether it  
 14:05:53 21 would have changed the vote, it could have  
 14:05:55 22 raised some questions that might have been  
 14:05:57 23 asked of the Board. For example, the -- I  
 14:06:01 24 believe there was a -- after the printing there  
 14:06:04 25 was a misstatement of the signing of the

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14:07:29 1 A. After it was -- the transaction  
 14:07:33 2 that I would have liked would have been another  
 14:07:35 3 transaction, I'll be candid about that. It was  
 14:07:39 4 not something that I -- I had sought more of a  
 14:07:43 5 merger of equals type transaction. Having  
 14:07:51 6 started down the road with this transaction  
 14:07:55 7 and, and once we had actually signed a contract  
 14:07:59 8 with McDonald, we assimilated the marketing  
 14:08:07 9 materials.

14:08:07 10 At that point I believe that you  
 14:08:10 11 go for continuity and closure in a transaction.  
 14:08:19 12 You do not put yourself up for sale, take  
 14:08:21 13 yourself off of the market, put yourself up for  
 14:08:24 14 sale, take yourself off of the market again.  
 14:08:27 15 It is obvious that -- and everything has to do  
 14:08:30 16 with timing. And it is obvious with the, I  
 14:08:33 17 believe five companies that we were shopped to,  
 14:08:35 18 ultimately four had no interest at that time.

14:08:44 19 Now, our guys could have closed  
 14:08:47 20 the process down and waited. There was  
 14:08:51 21 allegations that -- and they were  
 14:08:57 22 unsubstantiated because I never got a call from  
 14:09:02 23 anyone, but unsubstantiated allegations that  
 14:09:06 24 Fifth Third had too much on their plate and  
 14:09:08 25 they would do this and they would do that, and

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14:09:10 1 everybody knows that Fifth Third overpays and  
14:09:13 2 all of those types of things.

14:09:15 3 But I think once you enter into  
14:09:16 4 this process and once you are -- you have  
14:09:20 5 marketed yourself, then I felt, and this is why  
14:09:24 6 I voted -- one of the reasons I voted on August  
14:09:27 7 2, I felt that you don't -- you can't stop the  
14:09:31 8 transaction and act like it never happened, go  
14:09:36 9 down the road a year and a half or two years  
14:09:40 10 later and gear it up again and be effective.

14:09:43 11 It has had impact on the  
14:09:45 12 management team, it has had impact on Board  
14:09:48 13 members, on relationships and other things, and  
14:09:51 14 it's not going to be the same. So the cloud is  
14:09:54 15 not going to be going in the same direction as  
14:09:56 16 it was before. There's going to be a lot of  
14:09:58 17 forces tearing it apart. So when we got to  
14:10:02 18 this part of the transaction, I felt it was  
14:10:05 19 good to finalize the transaction, not to -- not  
14:10:09 20 to stop the transaction and, and do something  
14:10:12 21 totally different.

14:10:13 22 Q. In the end when all was said and  
14:10:16 23 done, do you think that the transaction was a  
14:10:17 24 good transaction?

14:10:19 25 MR. BRAUTIGAM: Objection.

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14:12:01 1 Q. How about when the deal went  
14:12:02 2 through, did you think it was good thing?

14:12:04 3 MR. BRAUTIGAM: Objection. What  
14:12:05 4 time exactly are we talking about, December  
14:12:07 5 3rd, 1999?

14:12:10 6 Q. When the deal was closed.

14:12:11 7 A. Yeah. When all was said and done,  
14:12:14 8 I think from a corporate Board perspective,  
14:12:21 9 yes. I would have liked to have seen the  
14:12:23 10 management of, of Provident do things  
14:12:27 11 differently, both for our personnel and quite  
14:12:35 12 frankly for our customers as well. But we had  
14:12:37 13 totally different operational styles, totally  
14:12:40 14 different operational philosophies.

14:12:44 15 People discussed with me and have  
14:12:48 16 chatted later that they don't care for  
14:12:52 17 Provident, some don't, some do. You know, it  
14:12:56 18 was change and people don't like change. And  
14:12:59 19 there's no way that you can go through a  
14:13:02 20 merger, a merger of, of companies at this  
14:13:08 21 magnitude and not have some drastic change.

14:13:12 22 And I think we looked to have  
14:13:17 23 maybe a little more insight into that and that  
14:13:20 24 didn't happen. And depending upon who you talk  
14:13:22 25 to within Provident, some would have liked to

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14:10:24 1 A. One year later and having  
14:10:27 2 Provident's stock price tank, and we have no  
14:10:33 3 control over that, if I had it to do over  
14:10:40 4 again, I would have liked to have possibly  
14:10:45 5 structured the exchange ratio differently. We  
14:10:50 6 all know now that it was -- Provident was at  
14:10:55 7 one of its highest points at the time that the  
14:10:58 8 exchange ratio was set. And certainly you  
14:11:01 9 can't hold a transaction open for a year, but  
14:11:04 10 you know, it had gone down and it went back up.

14:11:07 11 And when we signed the intent was  
14:11:11 12 when it was high and then it dropped. And I  
14:11:18 13 think there was some disservice possibly on the  
14:11:20 14 part of McDonald to, to have not helped us with  
14:11:30 15 that a little bit. They've seen that thing  
14:11:33 16 happen before. They chalk it up to, well,  
14:11:36 17 that's what the market does.

14:11:37 18 And certainly I would have a  
14:11:38 19 totally different opinion if Provident was  
14:11:41 20 trading at 60, so -- and that's just from a  
14:11:44 21 personal standpoint, but a lot of individuals,  
14:11:46 22 and I don't know -- I obviously cannot speak  
14:11:48 23 for where OHSL would be trading today, because  
14:11:51 24 certainly the financial industry as a whole has  
14:11:54 25 been beaten up pretty good right now. So --

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14:13:25 1 have had us involved a little more, but the  
14:13:28 2 transaction was -- I've never been involved in  
14:13:32 3 a transaction like this before, so I don't  
14:13:39 4 know, I guess. What I would have liked to have  
14:13:42 5 happened and what happened was a little  
14:13:43 6 different.

14:13:44 7 Q. Do you think that at the time it  
14:13:45 8 closed, it was a fair transaction?

14:13:48 9 A. It was fair. It, it was for --  
14:13:54 10 for the shareholders, I would have to say it  
14:14:01 11 was fair. And again as, you know, they were  
14:14:04 12 given enough information to vote the  
14:14:10 13 transaction down if they did not, you know, if  
14:14:13 14 they did not want it. So I think that's where  
14:14:17 15 a lot of times we get caught up in the personal  
14:14:24 16 things. And they voted that they wanted  
14:14:27 17 something different and so we have to respect  
14:14:30 18 that. Don't have to like it, but we have to  
14:14:33 19 respect it and that's fine.

14:14:37 20 MR. RAMSEY: That's all I have.

21 RE-CROSS-EXAMINATION

22 BY MR. BRAUTIGAM:

14:14:38 23 Q. Okay. I have a few follow-up  
14:14:41 24 questions based on what Mr. Ramsey asked.

14:14:44 25 A. Okay.

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14:14:44 1 Q. First of all, you just said that  
14:14:45 2 you felt the shareholders were given enough  
14:14:46 3 information to vote the transaction down if  
14:14:50 4 they didn't want it. Do you remember that?

14:14:52 5 A. Yes, sir.

14:14:53 6 Q. Okay. Were the shareholders given  
14:14:54 7 the information that the Chairman of the Board  
14:14:56 8 did not take a position on this with respect to  
14:14:58 9 the Board meeting on 8/2/99?

14:15:03 10 MR. RAMSEY: Objection.

14:15:03 11 A. You know they were not given that  
14:15:05 12 information.

14:15:06 13 Q. Okay. Were the shareholders given  
14:15:07 14 the information that one of the members of the  
14:15:09 15 ad hoc committee, Tom McKiernan, was not even  
14:15:13 16 in the country and thus did not vote on the  
14:15:15 17 transaction, contrary to what's reflected on  
14:15:18 18 the first page of the document?

14:15:20 19 MR. RAMSEY: Objection.

14:15:20 20 A. They were not given that  
14:15:21 21 information, no.

14:15:22 22 Q. Okay. Were the shareholders given  
14:15:23 23 the information, except in a left-handed way,  
14:15:26 24 that Mr. Herron had voted against the  
14:15:29 25 transaction and then resigned?

14:15:31 1 MR. RAMSEY: Objection.

14:15:34 2 A. Mr. Herron -- I will answer no to  
14:15:37 3 that. Mr. Herron never had the opportunity to  
14:15:41 4 vote against the transaction. There was only  
14:15:47 5 one vote taken and that was the vote on August  
14:15:52 6 2nd to accept that and go forward. We had  
14:15:59 7 votes at other points -- at other points in  
14:16:02 8 time for different situations, but when we came  
14:16:06 9 down to the final vote to accept the  
14:16:10 10 transaction as presented and negotiated, we  
14:16:14 11 only did that one time and he was not a member  
14:16:17 12 of the, the Board at that time.

14:16:20 13 Q. Okay.

14:16:21 14 A. So that was not -- he did not have  
14:16:27 15 an opinion to be expressed at that time.

14:16:29 16 Q. Okay. But on July 22nd, 1999 at a  
14:16:33 17 special meeting of the Board of Directors of  
14:16:35 18 OHSL Financial, Mr. Herron voted against  
14:16:38 19 continuing negotiations with respect to this  
14:16:40 20 transaction, correct?

14:16:41 21 A. That's correct. He voted, he  
14:16:42 22 voted against continuing the negotiations.

14:16:46 23 Q. Okay. In some of your previous  
14:16:48 24 answers when Mr. Ramsey was asking you  
14:16:51 25 questions, you seemed to link the definition of

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14:16:53 1 materiality with the outcome of the  
14:16:56 2 transaction, meaning, well, we might have done  
14:17:00 3 some things differently, but I don't think it  
14:17:02 4 would have changed the outcome of the  
14:17:04 5 transaction. Are you with me on that?

14:17:11 6 A. Yes, sir, I am.

14:17:11 7 Q. Okay. Do you believe that there  
14:17:11 8 is a link to materiality and changing the  
14:17:11 9 outcome of the transaction?

14:17:14 10 A. I do not know to what degree  
14:17:20 11 materiality would have, would have or can  
14:17:25 12 change an outcome of any transaction. To be  
14:17:31 13 very specific, I do not know what makes up  
14:17:36 14 material versus immaterial. When it comes to  
14:17:41 15 this, this transaction, as we have discussed  
14:17:49 16 correct and incorrect -- and not correct, I can  
14:17:53 17 see that the term unanimously is not a correct  
14:17:58 18 term. Whether that is a material fact or not,  
14:18:06 19 I'm not sure. I cannot draw that distinction.

14:18:13 20 So to, to elaborate on your point  
14:18:16 21 then, leaving out unanimously and had that  
14:18:24 22 paragraph read your Board of Directors  
14:18:26 23 approved, which I believe we all say would --  
14:18:32 24 was -- would be more correct than unanimously  
14:18:35 25 approved, would that have changed the outcome

14:18:40 1 of this transaction? My testimony would be, my  
14:18:43 2 belief is no, it would not have. I believe the  
14:18:52 3 word approved is strong enough in that  
14:18:55 4 paragraph that the word unanimously did not,  
14:19:02 5 did not do. Would it have changed the vote  
14:19:05 6 slightly? Maybe, but I don't know that.  
14:19:08 7 Q. Now, Mr. Hanauer, your belief that  
14:19:10 8 this would not have changed the outcome of the  
14:19:13 9 transaction is unknown and unknowable. Meaning  
14:19:16 10 there's no way to test this?

14:19:18 11 A. Absolutely. Absolutely.

14:19:19 12 Q. So this is just, in a sense, your  
14:19:21 13 wild speculation, correct?

14:19:22 14 A. You can call it wild, yes.

14:19:25 15 Q. Okay. Have you ever heard a  
14:19:27 16 definition from Mr. Roe or anyone that talks  
14:19:30 17 not about changing the outcome of the  
14:19:32 18 transaction, but information that would be of  
14:19:35 19 interest to a reasonable shareholder with  
14:19:40 20 respect to the total mix of information  
14:19:42 21 available to him or her in the marketplace?

14:19:44 22 A. From Mr. Roe, no.

14:19:45 23 Q. Have you ever heard a definition  
14:19:46 24 that refers to the total mix of information  
14:19:50 25 that a reasonable shareholder would be



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14:19:51 1 interested in in your conversations with Mr.  
14:19:54 2 Forrester or with anyone with respect to a  
14:19:56 3 definition of materiality?

14:19:58 4 A. Yes. And we've testified to that  
14:20:00 5 fact early on.

14:20:04 6 Q. Okay. You testified previously  
14:20:06 7 when Mr. Ramsey was asking you questions that  
14:20:09 8 you felt that there was nothing in the proxy  
14:20:11 9 materials and the prospectus that was  
14:20:14 10 deliberately misleading. Do you remember that  
14:20:16 11 testimony?

14:20:17 12 A. Yes, sir. I, I believe I  
14:20:20 13 testified that I put nothing in or took  
14:20:24 14 anything out that would deliberately mislead  
14:20:27 15 people.

14:20:28 16 Q. Okay. Do you think that, given  
14:20:29 17 some of the representations that I've asked you  
14:20:30 18 to accept and our discussion over what's been  
14:20:34 19 four days now, that whether it's deliberate or  
14:20:37 20 not, this document has the effect of being  
14:20:41 21 misleading, at least in certain areas?

14:20:45 22 MR. RAMSEY: Objection.

14:20:51 23 A. I -- you could draw the conclusion  
14:20:52 24 that it could have a misleading effect.

14:21:00 25 Q. Okay. You also testified, and I

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14:22:38 1 referred to, an account of the thought process  
14:22:40 2 of the ad hoc committee, that existed in draft  
14:22:44 3 form to be inserted into this document or not  
14:22:46 4 inserted at some point, correct?

14:22:48 5 A. When we started putting the  
14:22:50 6 document together, you know, you -- we had a  
14:22:53 7 lot of different pages. And literally it was  
14:22:55 8 in the document. It was typeset, it was in the  
14:22:58 9 document and it was taken out.

14:23:01 10 Q. Okay. I don't believe that I've  
14:23:02 11 seen that, so when is the last time you've seen  
14:23:04 12 that?

14:23:04 13 A. Mr. Condren had that document. He  
14:23:07 14 was -- he was the keeper. He was our scribe,  
14:23:12 15 if you will. He was the person that kept all  
14:23:15 16 of that -- all of that information. And that,  
14:23:18 17 again, would have been sent down to Cliff. He  
14:23:23 18 bundled up boxes of information and sent --  
14:23:26 19 three boxes of information, I believe, was sent  
14:23:29 20 down to --

14:23:30 21 Q. And why did you believe that that  
14:23:32 22 account should have been included in the  
14:23:34 23 document?

14:23:36 24 A. I felt it was, it was of  
14:23:40 25 interest -- or would be of interest to our

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14:21:01 1 was surprised by this, that with respect to  
14:21:06 2 what made it into the final document, that it  
14:21:09 3 was up to legal counsel, and you used the  
14:21:11 4 phrase, that was their prerogative. Why did  
14:21:14 5 you believe that to be the case?

14:21:18 6 A. I had reviewed different pieces of  
14:21:22 7 the document and questions that Mr. Forrester  
14:21:26 8 had brought to me, and again we have outlined  
14:21:29 9 these in our part of the -- part of my prior  
14:21:34 10 testimony. And when we reviewed those with,  
14:21:36 11 with Mr. Roe, he said that those were not  
14:21:42 12 things that would cause any difficulty, they  
14:21:47 13 did not need to be included in the -- he would  
14:21:50 14 not rewrite the document, they did not need to  
14:21:53 15 be included.

14:21:54 16 One of the questions that -- or  
14:21:58 17 one of the things as we initially wrote the  
14:22:02 18 document up, Mr. Condren and I, was an account  
14:22:09 19 of the thought processes that the ad hoc  
14:22:17 20 committee had gone through and the members --  
14:22:20 21 the makeup and the members of the ad hoc  
14:22:23 22 committee. And a large portion of that had  
14:22:29 23 been removed from the document as well in one  
14:22:33 24 of the first readings of it.

14:22:36 25 Q. This document that you just

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14:23:44 1 local shareholders of who drove the transaction  
14:23:52 2 to get it to that point. I would characterize  
14:23:52 3 that also as a vindictive move at this point,  
14:23:53 4 but it was something that, you know, if they  
14:24:02 5 felt so strongly about it, then once the  
14:24:03 6 document came out, let them answer the  
14:24:06 7 questions on it.

14:24:07 8 Q. Now, you testified that you felt  
14:24:08 9 McDonald had done OHSL and its shareholders a  
14:24:11 10 disservice. Other than what you mentioned, is  
14:24:14 11 there anything else that you want to point out  
14:24:16 12 where you felt that OHSL and its shareholders  
14:24:19 13 were ill served by McDonald?

14:24:22 14 MR. RAMSEY: Objection.

14:24:29 15 A. You always look for personal  
14:24:32 16 service when you hire professionals. And  
14:24:40 17 Charlie Crowley was -- his attentions were,  
14:24:47 18 were geared to Al Hucke and not to myself. I  
14:24:53 19 took that as a personal affront that I felt  
14:25:01 20 that maybe I didn't command his respect, but I  
14:25:06 21 deserved his respect as the president and CEO  
14:25:11 22 of both Oak Hills Savings and OHSL Financial.

14:25:15 23 And over my objections, which very  
14:25:17 24 possibly could have been shared with Charlie  
14:25:19 25 over time, his company was hired. I would not



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14:25:23 1 put that past Mr. McKiernan or Mr. Huckle, to  
 14:25:29 2 let Charlie know that I was not in favor of him  
 14:25:33 3 being hired to do it -- to do the transaction.  
 14:25:37 4 We overpaid, I had informal bids less than what  
 14:25:43 5 he charged, and it was my personal opinion we  
 14:25:48 6 could have got a better job, but the Board  
 14:25:50 7 would not hear of it, because they felt that  
 14:25:54 8 these people were too closely aligned with  
 14:25:57 9 myself and the management team.

14:25:59 10 Q. And when you say you overpaid,  
 14:26:01 11 other than a token payment, I think \$15,000,  
 14:26:05 12 had the transaction not gone through, McDonald  
 14:26:08 13 would not have received a lot of money,  
 14:26:10 14 correct?

14:26:10 15 A. Well, they got 15 on the front and  
 14:26:12 16 a total of 50 to put the book together and do  
 14:26:15 17 some other things, but right, had the  
 14:26:17 18 transaction failed -- yeah, they were paid on  
 14:26:20 19 performance, right.

14:26:21 20 Q. And performance in this case means  
 14:26:24 21 closing the transaction?

14:26:25 22 A. Got to go or they don't get any  
 14:26:27 23 money, correct.

14:26:28 24 Q. Okay. Now, in one of your  
 14:26:29 25 previous answers, you used the phrase sway one

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14:27:21 1 done for today.

14:27:22 2 THE WITNESS: Okay.

14:27:23 3 MR. BRAUTIGAM: And I thank you  
 14:27:24 4 for your time.

14:27:25 5 THE WITNESS: All right. And if  
 14:27:26 6 you need anything else, certainly feel free to  
 14:27:29 7 get me. I'm not leaving the jurisdiction.  
 14:27:31 8 I'll be here.

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KENNETH HANAUER

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(Deposition concluded at 2:22 p.m.)

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14:26:32 1 way or another. Do you remember using that  
 14:26:34 2 phrase?

14:26:35 3 A. Can you help me with where I used  
 14:26:37 4 it?

14:26:38 5 Q. It was with respect to a question  
 14:26:40 6 that Jamie asked you, and I wasn't actually  
 14:26:43 7 sure of the context and I wanted to follow up  
 14:26:45 8 on that. Let me ask the next question.

14:26:47 9 A. Okay.

14:26:48 10 Q. You agree with me, do you not,  
 14:26:51 11 that the prospectus and the proxy materials are  
 14:26:54 12 documents that do -- that are intended to sway  
 14:26:56 13 the shareholders to vote in favor of the  
 14:26:58 14 transaction, correct?

14:27:00 15 MR. RAMSEY: Objection.

14:27:03 16 A. Yes, I believe that -- I believe  
 14:27:06 17 that they are written in that regard, yes.

14:27:08 18 Q. All right. In fact --

14:27:10 19 A. Sure.

14:27:11 20 Q. In fact, it says on the first  
 14:27:12 21 page, the Board unanimously recommends and  
 14:27:14 22 advises that you approve the transaction.

14:27:16 23 A. Sure, sure.

14:27:18 24 MR. BRAUTIGAM: All right.  
 14:27:18 25 Subject to what I have said, I think that we're

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1 CERTIFICATE

2 STATE OF OHIO:

3 SS:

4 COUNTY OF HAMILTON:

5 I, Lee Ann Williams, a duly qualified

6 and commissioned notary public in and for the

7 State of Ohio, do hereby certify that prior to

8 the giving of his deposition, the within named

9 KENNETH HANAUER was by me first duly sworn to

10 testify the truth, the whole truth and nothing

11 but the truth; that the foregoing pages

12 constitute a true and correct transcript of

13 testimony given at said time and place by said

14 deponent; that said deposition was taken by me

15 in stenotypy and transcribed under my

16 supervision; that I am neither a relative of

17 nor attorney for any of the parties to this

18 litigation, nor relative of nor employee of any

19 of their counsel, and have no interest

20 whatsoever in the result of this litigation.

21 IN WITNESS WHEREOF, I hereunto set

22 my hand and official seal of office at

23 Cincinnati, Ohio this \_\_ day of

24 \_\_\_\_\_, 2000.

25 MY COMMISSION EXPIRES: \_\_\_\_\_  
 AUGUST 26, 2004 LEE ANN WILLIAMS, RPR/CRR  
 NOTARY PUBLIC-STATE OF OHIO